

RESOLUTION NO. 19-15

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MORGAN HILL APPROVING A CONDITIONAL USE PERMIT FOR A PUBLIC CHARTER SCHOOL PROJECT TO BE LOCATED AT THE NORTHWEST CORNER OF THE INTERSECTION OF MONTEREY ROAD AND COSMO AVENUE (APN: 767-17-047)

WHEREAS, on November 27, 2018, Pacific West Communities, Inc. submitted an application for a Conditional Use Permit to allow for a public charter school; and

WHEREAS, such request was considered by the Planning Commission at their regular meeting of October 8, 2019; and

WHEREAS, testimony received at a duly-noticed public hearing, along with exhibits and drawings and other materials have been considered in the review process.

NOW, THEREFORE, THE MORGAN HILL PLANNING COMMISSION DOES RESOLVE AS FOLLOWS:

SECTION 1. The approved conditional use is consistent with the Zoning Ordinance and the General Plan.

SECTION 2. The Planning Commission of the City of Morgan Hill hereby finds that, on the basis of the whole record before it (including the initial study and any comments received), that there is no substantial evidence that the project will have a significant effect on the environment and that the Mitigated Negative Declaration reflects the Planning Commission's independent judgment and analysis, and that the Mitigated Negative Declaration was adopted prior to action taken to adopt the Resolution. The custodian of the documents or other material which constitute the record shall be the Community Development Department.

SECTION 3. The approved conditional use has been found consistent with the criteria for Conditional Use Permit approval contained in Section 18.108.030 of the Zoning Code and hereby adopted:

a. **The proposed use is allowed in the applicable district.**

Public charter schools are identified as a "Permitted Use" in the MU-F zoning district with an approved Conditional Use Permit. The Planning Commission could approve the Conditional Use Permit if all the findings for approval can be met.

- b. **The proposed use is consistent with the General Plan, Zoning Code, and any applicable specific plan or area plan adopted by the City Council.**

The project is consistent with the MU-F General Plan designation and Zoning Code. Non-residential projects located within the MU-F district are not required to pursue a block level master plan. The site plan will provide adequate parking for the school, however, will require an Off-Site Parking Agreement for development of a multipurpose building and to accommodate extracurricular school events. As a result, the applicant is seeking approval of the Conditional Use Permit (CUP) for Phase I of the project, while obtaining conditional approval of Phase II, with final approval to be obtained by the Planning Commission only upon approval of an acceptable Off-Site Parking Agreement.

- c. **The site is suitable and adequate for the proposed use.**

The proposed use can be accommodated within the 2.02-acre parcel. The school will be fenced but will also provide an interpretive trail along West Little Llagas Creek Trail and off-site improvements along Cosmo Avenue and Monterey Road including the construction of a new pedestrian crosswalk, lighted yield trail crossing signs, and associate road improvements. The use will not adversely affect the existing uses that are adjacent to the site.

- d. **The location size, design, and operating characteristics of the proposed use will be compatible with the existing and future land uses in the vicinity of the property.**

The site is adequate for school use, including the school buildings, parking area, and interpretive trail. The use is compatible with existing land uses of residential and commercial. The design of the buildings and landscape will complement Monterey Road and West Little Llagas Creek.

- e. **The proposed use will not be detrimental to the public health, safety, and welfare.**

Office hours at the proposed school would be from 7:30 AM to 4:30 PM, Monday through Friday. Staff would typically be on-site between 7:00 AM to 6:00 PM. The proposed hours of operation of the school are consistent with the surrounding land uses.

- f. **The proposed use would not have a substantial adverse effect on traffic circulation and on the planned capacity of the street system.**

The proposed project will not have a substantial adverse effect on the traffic circulation or capacity of the street system because Mitigation Measures and Conditions of Approval have been incorporated into the project to maintain the level of service of the roadways and improve pedestrian safety with the required off-site improvements along Monterey Road and Cosmo Avenue.

- g. **The proposed use is properly located within the city and adequately served by the existing and planned services and infrastructure.**

The proposed use is within the City's Urban Service area where utilities, such as gas, water, sewer, and electricity and public services are provided.

SECTION 4. The use shall be expressly conditioned in conformance with conditions incorporated herein and as attached as Exhibit "A".

SECTION 5 The approved project shall be conducted in a manner consistent with the Conditions of Approval attached hereto as Exhibit A.

SECTION 6. Notice is hereby given that, pursuant to the Mitigation Fee Act, the City of Morgan Hill charges certain fees (as such term is defined in Government Code Section 66000) in connection with approval of your use for the purpose of defraying all or a portion of the cost of public facilities related to your development project (Mitigation Fee Act Fees). These fees do not include fees for processing applications for governmental regulatory actions or approvals, or fees collected (a) under development agreements, (b) pursuant to agreements with the Morgan Hill Redevelopment Agency or (c) as a part of your application for development allocations under the City's Residential Development Control System. The Mitigation Fee Act Fees applying to your project are listed in the schedule of fees provide. Notice is also hereby given that you have the opportunity to protest the imposition of the Mitigation Fee Act Fees within 90 days of the approval of the approval or conditional approval of your development project and that the 90-day approval period in which you may protest has begun. This right to protest does not apply to voluntary Residential Development Control System fees.

PASSED AND ADOPTED THIS 8th DAY OF OCTOBER 2019, AT A REGULAR MEETING OF THE PLANNING COMMISSION BY THE FOLLOWING VOTE:

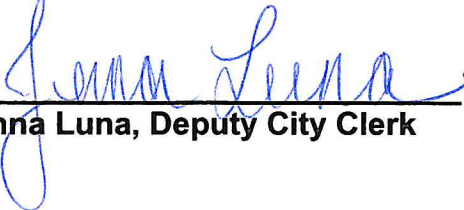
AYES:	COMMISSIONERS:	MUNOZ-MORRIS, HABIB, MUELLER, TANDA, GONZALEZ-ESCOTO, KUMAR, DOWNEY
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NOES:	COMMISSIONERS:	NONE
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ABSTAIN: COMMISSIONERS: NONE

ABSENT: COMMISSIONERS: NONE

ATTEST:



Jenna Luna, Deputy City Clerk

APPROVED:



Juan Miguel Munoz-Morris, Chair

AFFIDAVIT

We, Pacific West Communities^{inc}, applicants, hereby agree to accept and abide by the terms and conditions specified in this resolution.

By: 

Date: 11-14-19

EXHIBIT "A"

STANDARD CONDITIONS

APPLICATION: UP2018-0015 Monterey - Voices

THE FOLLOWING ARE STANDARD CONDITIONS OF APPROVAL THAT MUST BE MET PRIOR TO THE ISSUANCE OF BUILDING PERMITS AND/OR SITE DEVELOPMENT PERMITS EXCEPT AS MAY BE SPECIFIED IN THE CONDITIONS. THE APPROVAL REQUIREMENTS INCLUDE THESE REQUIREMENTS AND ANY SPECIAL CONDITIONS THAT ARE APPLIED THROUGH THE DEVELOPMENT APPROVAL PROCESS. APPLICANTS ARE REQUIRED TO SIGN THE APPROVAL CERTIFICATE/RESOLUTION FORM INDICATING THEY UNDERSTAND AND AGREE TO IMPLEMENT THESE STANDARD CONDITIONS AND ANY SPECIAL CONDITIONS APPLIED TO THEIR PERMIT APPROVAL.

ACRONYMS:

MHMC – Morgan Hill Municipal Code

MHARH – Morgan Hill Architectural Review Handbook

PLANNING DIVISION

I. TIME LIMITS

- A. The Conditional Use Permit approval shall remain in effect for 24 months to October 8, 2021. Failure to exercise the use within this term shall result in termination of approval unless an extension of time is granted prior to the expiration date. **(MHMC 18.104.210)**

II. PROJCT DESCRIPTION

- A. **Phase I:** Phase I shall include development of a 27,825-square foot school building, an uncovered parking lot, an outdoor playground and turf play area, an outdoor lunch shelter, trash enclosure, and associated improvements. The two-story school building will have 18 classrooms, office/administrative space, a teacher's room, cafeteria, and restrooms.
- B. **Phase II:** Phase II would replace the outdoor lunch shelter with a 7,326 square foot multi-purpose building, and include a reading room, special education room, storage space, and bathrooms. Prior to implementation of Phase II, the applicant shall secure an Off-Site Parking Agreement and obtain final approval from the Planning Commission allowing off-site parking as an alternative to on-site parking.
- C. **Events:** On-site extracurricular school events unrelated to instructional or classroom activities such as carnivals or activities that cover a significant

portion of the parking area shall be subject to a Temporary Use Permit until the Planning Commission determines that adequate parking has been provided for the additional activities.

- D. **Drop-off/pick-up area:** The project shall continue to implement the drop-off/pick-up provisions specified in the Mitigation Monitoring Reporting Program, which include providing school staff or parent volunteers along the drop-off areas to assist students in and out of vehicles and improve drop-off procedure efficiency. Additionally, in order to speed up student pick-up, parents will place a name card on the passenger side visor showing the last name and grade level of the child being picked-up. Staff will radio ahead to ensure the student is ready for pickup when the parent reaches the drop-off area. During drop-off times, school staff will be positioned along the drive aisle to ensure that students do not unload outside of the designated loading zone.

The proposed charter school shall implement 30-minute staggered start times; specifically, a start time of 8:00 AM for upper grade levels (sixth through eighth grades) and 8:30 AM for lower grade levels (kindergarten through fifth grades).

- E. **Student population and Hours:** The school shall have a maximum of 504 students and include approximately 63 employees. Office hours at the school are from 7:30 AM to 4:30 PM, Monday through Friday, with staff on-site between 7:00 AM to 6:00 PM. Activities related to instructional or classroom activities shall be allowed beyond 6:00 PM.
- F. **SAFE ROUTE TO SCHOOL:** A "Safe Routes to School" (SRTS) plan will be developed with the City and the improvements identified in the SRTS plan shall be implemented and installed prior to the opening of the school.

III. SITE DEVELOPMENT

- A. **TREE PROTECTION:** Unless tree removal has been previously approved, all trees located within the project shall be protected using the following minimum protection measures (these guidelines shall be included with all site development plans):
- Mark all trees to be saved with a survey flag or ribbon. Do not nail or staple directly to the tree.
 - Erect a temporary fence enclosing an area equal to at least the dripline of the tree (or as far from the trunk as possible). This tree protection zone shall not be used for parking, storage of building materials, or other equipment or the placement of temporary or permanent fill. Signs should be posted identifying the restriction of uses in the tree protection zone.

- Locate structures, grade changes, and other ground or surface disturbances (e.g. concrete pours) as far as feasible from the “dripline” area of the tree.
 - Avoid root damage through grading, trenching, compaction, etc. at least within an area 1.5 times the dripline area of the tree. Where root damage cannot be avoided, roots encountered over 1” in diameter should be exposed approximately 12” beyond the area to be disturbed (towards the tree stem), by hand excavation, or with specialized hydraulic or pneumatic equipment, cut cleanly with hand pruners or power saw and immediately back-filled with soil. Avoid tearing or otherwise disturbing that portion of the roots to remain.
 - The addition of plant or other landscaping materials shall remain outside of the dripline of all trees.
 - Any tree subject to Chapter 12.32 Restrictions on Removal of Significant Trees of the Morgan Hill Municipal Code requires approval from the Planning Division. The applicant shall request approval prior to removing any significant trees.
- B. **FINAL SITE DEVELOPMENT PLANS:** Final site development plans shall be reviewed for conformance with Morgan Hill Municipal Code Section 18.108.040 and approved by the Community Development Department prior to issuance of a building permit. All such plans shall include:
- Detail depicting all concrete curbs as full formed.
 - Provision of catalogue drawings depicting the proposed parking area lighting fixtures. Exterior lighting of the building and site shall be designed so that lighting is not directed onto adjacent properties and light source is shielded from direct off-site viewing.
 - Ramps, special parking spaces, signing and other physical features for the disabled, shall be provided throughout the site for all publicly used facilities.
 - Trash enclosures shall be constructed of a sturdy, opaque material, minimum 6 feet in height with solid view obstructing gates and shall be designed in harmony with the architecture of the building(s). Sizing and design shall conform to the Morgan Hill Architectural Review Handbook. In residential areas, restaurants or other food service commercial uses, trash enclosure areas shall require an overhead shade structure. Trash enclosures shall be required in all commercial and industrial projects and in residential projects containing four or more dwelling units.
 - All mechanical equipment, including electrical and gas meters, post indicator valve, backflow prevention devices, etc., shall be architecturally screened from view or located interior to the building. All ground mounted utility appurtenances such as transformers shall not be visible from any public right-of-way and shall be adequately screened through the use or combination of concrete or masonry walls, berming, and landscaping.

(MHARH p.20, 45, 79) For additional screening, backflow preventers shall be painted dark green, except the fire connection which shall be painted yellow.

- All existing on-site overhead utilities shall be placed underground in an approved conduit from the service connection at the street or at the property line to the service connection at the building.

C. **DUST, NOISE, VIBRATION, AND MATERIALS MANAGEMENT PLAN:** A management plan detailing strategies for control of noise, dust and vibration, and storage of hazardous materials during construction of the project shall be on all site development and grading plans. The intent of this condition is to minimize construction related disturbance of residents of the nearby or adjacent properties. **(MHMC 18.76)**

The plan must include the following "Basic Construction Mitigation Measures" per Bay Area Air Quality Management District's guidelines:

- All exposed surfaces (e.g., parking areas, staging areas, soil piles, graded areas, and unpaved access roads) shall be watered two times per day.
- All haul trucks transporting soil, sand, or other loose material off-site shall be covered.
- All visible mud or dirt track-out onto adjacent public roads shall be removed using wet power vacuum street sweepers at least once per day. The use of dry power sweeping is prohibited.
- All vehicle speeds on unpaved roads shall be limited to 15 mph.
- All roadways, driveways, and sidewalks to be paved shall be completed as soon as possible. Building pads shall be laid as soon as possible after grading unless seeding or soil binders are used.
- Idling times shall be minimized either by shutting equipment off when not in use or reducing the maximum idling time to 5 minutes (as required by the California airborne toxics control measure Title 13, Section 2485 of California Code of Regulations [CCR]). Clear signage shall be provided for construction workers at all access points.
- All construction equipment shall be maintained and properly tuned in accordance with manufacturer's specifications. All equipment shall be checked by a certified visible emissions evaluator.
- Post a publicly visible sign with the telephone number and person to contact at the lead agency regarding dust complaints. This person shall respond and take corrective action within 48 hours. The Air District's phone number shall also be visible to ensure compliance with applicable regulations.

IV. BUILDING DESIGN

- A. **Roof mounted mechanical equipment:** All roof mounted mechanical equipment shall be placed within a screened roof top enclosure depicted on the elevation drawings or located below the parapet level and shall not

be visible from the ground at any distance from the building. Cross section roof drawings shall be provided at the building permit stage indicating the relative height of the screen wall or parapet. Minimum screen height or parapet depth shall be 5 feet or greater to match the height of any proposed equipment. (MHARH p.48, 65, 87, 106)

- B. **Building mounted lighting:** Lighting fixtures shall not project above the fascia or roofline of the building. Any ground mounted lighting projecting onto the building or site will be subject to the review and approval of the Director of Community Development. Adjustment to the lighting intensity may be required after the commencement of the use. (MHARH p. 67, 109)
- C. **Architectural elements:**
- All vents, gutters, downspouts, flashing, electrical conduits, etc. shall be painted to match the color of the adjacent surface or otherwise designed in harmony with the building exterior. (MHMC 18.74.360)
 - Soffits and other architectural elements visible from view but not detailed on the plans shall be finished in a material in harmony with the exterior of the building. (MHMC 18.74.340)

V. PARKING & VEHICULAR ACCESS

- A. **Parking area landscaping:** The interior of any parking area shall be landscaped with planter areas measuring a minimum five feet in width, minimum inside dimension. Additional planters shall be provided at both ends of a row of spaces with the planter area length equal to the adjoining parking spaces. The landscape planter shall contain a 12" strip extension (created as an integral pour) of concrete inside the 6" curb of the planter, to create an 18" concrete strip. (MHMC 18.64.050)

VI. LANDSCAPING

- A. **Trees and shrubs minimum size:** All trees within approved landscape plans shall be of a minimum 15 gallon size. All shrubs shall be minimum 5 gallon size unless otherwise approved by the Community Development Director.
- B. **Maintenance of landscaping:** The landscaping installed and accepted with this project shall be maintained on the site as per the approved plans. Any alteration or modification to the landscaping shall not be permitted unless otherwise approved by the Community Development Director or Design Review Board.
- C. **Water Conservation in Landscaping Ordinance:** The landscape plans shall be in conformance with the City's Water Conservation in Landscaping Ordinance that was developed in accordance with California law. This Ordinance restricts landscaping turf to certain areas, specifies

plant selection, requires certain types of irrigation equipment, and calls for the development of comprehensive water use calculations as an aspect of the submitted landscape plans. It is strongly suggested that the project's landscape designer refer to the City's Ordinance prior to beginning development of the project's landscape plans. **(MHMC 18.64)**

VII. HABITAT PLAN

- A. The approved project is covered under the Santa Clara Valley Habitat Plan (Habitat Plan) and subject to fees and conditions contained in the Habitat Plan.
- B. Prior to issuance of building permits or grading permits the project shall complete and submit a Habitat Plan Application Package. All fees must be paid prior to issuance building permits or grading permits. **(MHMC 18.132)**
- C. Any additional conditions or mitigations required by the Habitat Plan shall be clearly stated on all plans that involve any ground disturbing activity (i.e. grading plans, improvement plans, paving plans, demolition plans or other plans for site clearing or temporary stockpile of dirt). **(MHMC 18.132)**

VIII. CULTURAL RESOURCES

- A. **Significant historic or archaeological materials:** This project has been determined not to be in a site identified as archaeologically sensitive by the City's adopted archaeological sensitivity map, but nonetheless could adversely impact undocumented human remains or unintentionally discover significant historic or archaeological materials. The following policies and procedures for treatment and disposition of inadvertently discovered human remains or archaeological materials shall apply and should be provided as standard conditions on the building permit, grading permit, or improvement plans. If human remains are discovered, it is probable they are the remains of Native Americans.
 - a. If human remains are encountered they shall be treated with dignity and respect as due to them. Discovery of Native American remains is a very sensitive issue and serious concern. Information about such a discovery shall be held in confidence by all project personnel on a need to know basis. The rights of Native Americans to practice ceremonial observances on sites, in labs and around artifacts shall be upheld. Remains should not be held by human hands. Surgical gloves should be worn if remains need to be handled. Surgical mask should also be worn to prevent exposure to pathogens that may be associated with the remains.
 - b. In the event that known or suspected Native American remains are encountered or significant historic or archaeological materials are discovered, ground-disturbing activities shall be immediately stopped.

Examples of significant historic or archaeological materials include, but are not limited to, concentrations of historic artifacts (e.g., bottles, ceramics) or prehistoric artifacts (chipped chert or obsidian, arrow points, groundstone mortars and pestles), culturally altered ash-stained midden soils associated with pre-contact Native American habitation sites, concentrations of fire-altered rock and/or burned or charred organic materials, and historic structure remains such as stone-lined building foundations, wells or privy pits. Ground-disturbing project activities may continue in other areas that are outside the discovery locale.

- c. An "exclusion zone" where unauthorized equipment and personnel are not permitted shall be established (e.g., taped off) around the discovery area plus a reasonable buffer zone by the Contractor Foreman or authorized representative, or party who made the discovery and initiated these protocols, or if on-site at the time of discovery, by the Monitoring Archaeologist (typically 25-50ft for single burial or archaeological find).
- d. The discovery locale shall be secured (e.g., 24-hour surveillance) as directed by the City or County if considered prudent to avoid further disturbances.
- e. The Contractor Foreman or authorized representative, or party who made the discovery and initiated these protocols shall be responsible for immediately contacting by telephone the parties listed below to report the find and initiate the consultation process for treatment and disposition:
 - The City of Morgan Hill Community Development Director (408) 779-7247
 - The Contractor's Point(s) of Contact
 - The Coroner of the County of Santa Clara (if human remains found) (408) 793-1900
 - The Native American Heritage Commission (NAHC) in Sacramento (916) 653-4082
 - The Amah Mutsun Tribal Band (916) 481-5785 (H) or (916) 743-5833 (C)
- f. The Coroner has two working days to examine the remains after being notified of the discovery. If the remains are Native American the Coroner has 24 hours to notify the NAHC.
- g. The NAHC is responsible for identifying and immediately notifying the Most Likely Descendant (MLD) from the Amah Mutsun Tribal Band. (Note: NAHC policy holds that the Native American Monitor will not be designated the MLD.)

- h. Within 24 hours of their notification by the NAHC, the MLD will be granted permission to inspect the discovery site if they so choose.
- i. Within 24 hours of their notification by the NAHC, the MLD may recommend to the City's Community Development Director the recommended means for treating or disposing, with appropriate dignity, the human remains and any associated grave goods. The recommendation may include the scientific removal and non-destructive or destructive analysis of human remains and items associated with Native American burials. Only those osteological analyses or DNA analyses recommended by the Amah Mutsun Tribal Band may be considered and carried out.
- j. If the MLD recommendation is rejected by the City of Morgan Hill the parties will attempt to mediate the disagreement with the NAHC. If mediation fails then the remains and all associated grave offerings shall be reburied with appropriate dignity on the property in a location not subject to further subsurface disturbance.

IX. OTHER CONDITIONS

- A. The Conditional Use Permit is approved solely for the operation of the public charter school (Application UP2018-0015: Monterey-Voices). Any expansion, intensification, or changes to the uses approved under this Conditional Use Permit shall be permitted only upon amendment of this Conditional Use Permit or approval of a separate Conditional Use Permit application.
- B. Applicant agrees to defend, indemnify, and hold harmless the City of Morgan Hill, its officers, agents, employees, officials and representatives (Indemnitees) from and against any and all claims, actions, or proceedings arising from any suit for damages or for equitable or injunctive relief which is filed against City to attack, set aside, void or annul its approval of this discretionary project or any related decision, or the adoption of any environmental documents which relates to said approval. The City shall promptly notify the Applicant of any such claim, action or proceeding and the City shall cooperate fully in the defense thereof. In the event that Applicant is required to defend Indemnitees in connection with the proceeding, Indemnitees shall retain the right to approve (a) the counsel to so defend Indemnitees; (b) all significant decisions concerning the manner in which the defense is conducted; and (c) any and all settlements, which approval shall not be unreasonably withheld. This indemnification shall include, but is not limited to, (a) all pre-tender litigation costs incurred on behalf of the City, including City's attorney's fees and all other litigation costs and expenses, including expert witnesses, required to defend against any lawsuit brought as a result of City's approval or approvals; (b)

reasonable internal City administrative costs, including but not limited to staff time and expense spent on the litigation, after tender is accepted; and (c) all damages, costs, expenses, attorney fees or expert witness fees that may be awarded to the prevailing party arising out of or in connection with the approval of the application or related decision. City may, in its sole discretion, participate in the defense of such action; but such participation shall not relieve Applicant of its obligations under this condition. The undersigned hereby represents that they are fully empowered by the Applicant as their agent to agree to provide the indemnification, defense and hold harmless obligations, and the signature below represents the unconditional agreement by applicant to be bound by such conditions.

- C. Notice is hereby given that, pursuant to the Mitigation Fee Act, the City of Morgan Hill charges certain fees (as such term is defined in Government Code Section 66000) in connection with approval of your development project for the purpose of defraying all or a portion of the cost of public facilities related to your development project (Mitigation Fee Act Fees). These fees do not include fees for processing applications for governmental regulatory actions or approvals, fees collected under development agreements, or as a part of your application for development allocations under the City's Residential Development Control System. The Mitigation Fee Act Fees applying to your project are listed in the schedule of fees provide. Notice is also hereby given that you have the opportunity to protest the imposition of the Mitigation Fee Act Fees within 90 days of the approval of the approval or conditional approval of your development project and that the 90-day approval period in which you may protest has begun.
- D. Submit two (2) signed copies of Resolution No.19-15 to the Planning Division prior to issuance of building permits.

X. PROJECT MITIGATION MEASURES

The applicant shall be subject to compliance with the mitigation measures of the project's adopted Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program. The following mitigation measures shall be included with all building permit, grading, or improvement plans.

Biological Resources

The project's construction-related activities, including site preparation and grading, could have potentially significant effects on burrowing owls, raptors, and other protected migratory birds. Furthermore, the project includes the removal of one on-site tree that is protected by the City's Municipal Code and would be subject to payment of fees consistent with the Santa Clara Valley Habitat Plan. Implementation of the following measures would reduce such potentially significant effects to less-than-significant levels.

- BIO-1:** A pre-construction survey shall be conducted by a qualified Burrowing Owl biologist no more than 30 days prior to initiation of any ground disturbing (construction) activity to assure take avoidance of burrowing owls. The survey shall consist of a habitat assessment, burrow survey, owl survey, and completion of a written report. The written report shall be submitted to the City of Morgan Hill Development Services Department. If owls are not determined to be present on-site, further mitigation is not required. If owls are observed during the preconstruction survey, no impacts to the owls or their habitat will be allowed during the nesting season (February 1 to August 31), and Mitigation Measures IV-2 and IV-3 shall be implemented.
- BIO-2:** Should burrowing owls be found on the site during the breeding season (February 1 through August 31), exclusion zones, with a 250-foot radius from occupied burrows, shall be established. All development-related activities shall occur outside of the exclusion area until the young have fledged. Establishment of the exclusion area shall be determined by a qualified biologist to the satisfaction of the City of Morgan Hill Development Services Department.
- BIO-3:** If pre-construction surveys are conducted during the non-breeding season (September 1 through January 31) and burrowing owls are observed on the site, the project proponent shall establish a 250-foot non-disturbance buffer around occupied burrows as determined by a qualified biologist. Construction activities outside of the 250-foot buffer shall be allowed. Construction activities within the non-disturbance buffer shall be allowed if the following criteria are met in order to prevent owls from abandoning important overwintering sites:
- A qualified biologist monitors the owls for at least three days prior to construction to determine baseline foraging behavior (i.e., behavior without construction).
 - The same qualified biologist monitors the owls during construction and finds no change in owl foraging behavior in response to construction activities.
 - If any change in owl foraging behavior occurs as a result of construction activities, such activities shall cease within the 250-foot buffer.
 - If the owls are gone for at least one week, the project proponent may request approval from the Habitat Agency that a qualified biologist excavate usable burrows to prevent owls from reoccupying the site. After all usable burrows are excavated, the buffer zone shall be removed, and construction may continue. Monitoring shall continue as

described above for the non-breeding season as long as the burrow remains active.

Passive relocation of owls shall not be permitted unless the positive growth trend described in Section 5.4.6 of the SCVHP is achieved and all passive relocation measures identified in the SCVHP are implemented. The project applicant may choose to obtain an exception that would allow for passive relocation, in which case an application shall be submitted to the Habitat Agency along with a passive relocation plan in accordance with Section 6.6.1, Condition 15, Exceptions to Passive Relocation Prohibition, of the SCVHP. The Habitat Agency shall have the final authority to grant or deny the requested exception.

BIO-4: If construction is proposed during breeding season (February 1 to August 31), a pre-construction nesting survey for raptors and other protected migratory birds shall be conducted by a qualified biologist and submitted to the City of Morgan Hill Development Services Department for review no more than 14 days prior to the start of construction. Pre-construction surveys during the non-breeding season (September 1 to January 31) are not necessary for birds, including roosting raptors, as they are expected to abandon their roosts during construction. If these species are deemed absent from the area, construction may occur within 14 days following the survey during the early nesting season (February to May) and within 30 days following the survey during the late nesting season (June to August).

If nesting raptors are detected on or adjacent to the site during the survey, a suitable construction-free buffer shall be established around all active nests. The precise dimension of the buffer (250-foot minimum for certain raptors) shall be determined by the qualified biologist at that time and may vary depending on location, topography, type of construction activity, and species. The buffer areas shall be enclosed with temporary fencing, and construction equipment and workers shall not enter the enclosed setback areas. Buffers shall remain in place for the duration of the breeding season or until it has been confirmed by a qualified biologist that all chicks have fledged and are independent of their parents.

BIO-5: The project applicant shall mitigate for the removal of the Ordinance Sized Tree located at the eastern portion of the site along Monterey Road, as identified in the tree survey prepared for the proposed project, by providing an on-site replacement planting at a 1:1 ratio with a 15-gallon minimum size tree.

For the Ordinance Sized Trees within the southwestern corner of the site, which are to be preserved as part of the project, the project applicant shall retain a certified arborist to prepare a tree protection plan, subject to review and approval by the Development Services Department. The plan shall demonstrate how any retained trees are to be protected during and after construction. The tree protection plan may include, but not be limited to, the following:

- Locate structures, grade changes, etc. as far as feasible from the 'dripline' area of the tree.
- Avoid root damage through grading, trenching, compaction, etc., at least within an area 1.5 times the 'dripline' area of trees. Where root damage cannot be avoided, roots encountered (over one inch in diameter) should be exposed approximately 12 inches beyond the area to be disturbed (towards tree stem), by hand excavation, or with specialized hydraulic or pneumatic equipment, cut cleanly with hand pruners or power saw, and immediately back-filled with soil. Tearing, or otherwise disturbing the portion of the root(s) to remain, shall be avoided.
- A temporary fence shall be constructed as far from the tree stem (trunk) as possible, completely surrounding the tree, and six to eight feet in height. 'No parking or storage' signs shall be posted outside/on the fencing. Postings shall not be attached to the main stem of the tree.
- Vehicles, equipment, pedestrian traffic, building materials, debris storage, and/or disposal of toxic or other materials shall not be permitted inside of the fenced off area.
- The project applicant shall avoid pruning immediately before, during, or immediately after construction impact. Perform only that pruning which is unavoidable due to conflicts with proposed development. Aesthetic pruning should not be performed for at least one to two years following completion of construction.
- Trees that will be impacted by construction may benefit from fertilization, ideally performed in the fall, and preferably prior to any construction activities, with not more than six pounds of actual nitrogen per 1,000 square feet of accessible 'drip line' area or beyond.
- The 'rooting' area shall be mulched with an acidic, organic compost or mulch.
- The project applicant shall arrange for periodic (Biannual/Quarterly) inspection of tree's condition, and treatment of damaging conditions (insects, diseases, nutrient deficiencies, etc.) as such conditions occur, or as appropriate.

Subject to the discretion of the Development Services Department, individual trees likely to suffer significant impacts may require specific, more extensive efforts and/or a more detailed specification than those contained within the above general guidelines.

BIO-6: No later than submittal of the first construction or grading permit for the proposed project the owner or designee shall pay the Santa Clara Valley Habitat Plan per-acre fee in effect for the appropriate fee zone of the project site, as determined by the Santa Clara Valley Habitat Agency, in compliance with Section 18.132.050 of the Morgan Hill Municipal Code.

BIO-7: Implement Mitigation Measures IV-1 through IV-5.

Hydrology and Water Quality

Inclusion of project-specific Best Management Practices (BMPs) in the Stormwater Pollution Prevention Plan (SWPPP) prepared for the proposed project would be necessary to ensure that discharge of pollutants to West Little Llagas Creek does not occur during construction activities. Implementation of the following measure would reduce such potentially significant impacts to a less-than-significant level.

HYD-1: Prior to submittal to the RWQCB, the Storm Water Pollution Prevention Plan (SWPPP) prepared for the proposed project shall include, to the satisfaction of the City Engineer, Best Management Practices (BMPs) designed to limit the discharge of sediment or other pollutants to West Little Llagas Creek. Such BMPs shall include, but not necessarily be limited to, the installation of silt fencing at the limit of the proposed grading activities.

Noise

The proposed project would result in a temporary or periodic increase in ambient noise levels in the project vicinity during construction. Implementation of the following measures would reduce such potentially significant impacts to less-than-significant levels.

NOI-1: Noise-generating construction activities associated with the proposed project shall not occur within the hours identified in Municipal Code Section 8.28.040(D). The above language shall be included on final project improvement plans prior to approval by the City of Morgan Hill Development Services Department.

NOI-2: To the maximum extent practical, the following measures should be implemented during project construction:

- All noise-producing project equipment and vehicles using internal-combustion engines shall be equipped with manufacturers-recommended mufflers and be maintained in good working condition;
- All mobile or fixed noise-producing equipment used on the project site that are regulated for noise output by a federal, State, or local agency shall comply with such regulations while in the course of project construction;
- Electrically powered equipment shall be used instead of pneumatic or internal-combustion-powered equipment, where feasible;
- Material stockpiles and mobile equipment staging, parking, and maintenance areas shall be located as far as practicable from noise-sensitive receptors;
- Project area and site access road speed limits shall be established and enforced during the construction period; and
- Nearby residences shall be notified of construction schedules so that arrangements can be made, if desired, to limit their exposure to short-term increases in ambient noise levels.

The above requirements shall be included via notation on project grading plans, subject to review and approval by the Development Services Department.

Transportation

Under both Existing Plus Project and Cumulative Plus Project conditions, the proposed project would conflict with applicable City Level of Service (LOS) standards at the Monterey Road/San Pedro Avenue intersection. The existing signal at the Monterey Road/Cosmo Avenue intersection does not include pedestrian phasing necessary to allow for connectivity between the project site and the surrounding area. Furthermore, the project could result in a potentially significant impact related to substantially increasing hazards due to design features or introduction of incompatible uses. Implementation of the following measures would reduce such potentially significant impacts to less-than-significant levels.

TRA-1: Prior to submittal of the improvement plans for the project, the project plans shall show the construction of a raised median along Monterey Road at San Pedro Avenue, restricting left-turns out of San Pedro Avenue to southbound Monterey Road. With the left-turn restriction, only right-turns in and out at both San Pedro Avenue (east leg of the intersection) and the existing driveway (west leg of the intersection), as well as southbound left-turns, shall be allowed. The design of the

median shall be to the satisfaction of the Engineering and Utilities Division.

TRA-2: Final project improvement plans prepared for the proposed project shall include, to the satisfaction of the City Engineer, installation of a crosswalk at the northern leg of the Monterey Road/Cosmo Avenue intersection and protected phasing on all approaches of the intersection, including modifying the traffic signal to include protected left-turn phasing on the northbound and southbound approaches and split phasing on the eastbound and westbound approaches.

TRA-3: Final project improvement plans prepared for the proposed project shall include, to the satisfaction of the City Engineer, installation of post-mounted rectangular rapid flashing LED beacons on the bike/pedestrian crossing warning signs at the Little Llagas Creek Trail access on Cosmo Avenue.

TRA-4: The following conditions shall be noted on project construction drawings, to the satisfaction of the City Engineer, prior to issuance of a building permit or approval of improvement plan:

- During morning drop-off times at the proposed project, school staff or parent volunteers shall be stationed along the drop-off area to assist students in and out of vehicles and improve drop-off procedures efficiency. Additionally, in order to speed up student pick-up, parents picking up students shall place a name card on the passenger side visor showing the last name and grade level of the child being picked-up so that school staff, positioned at the project driveway, can radio ahead to staff at the drop-off area the name of the student being picked up to ensure the student is ready for pick-up by the time the parent reaches the drop-off area.
- Measures shall be taken to ensure efficient utilization of the available queue storage space within the project site and the efficient and safe loading/unloading of the students. The drop-off/pick-up area shall be well-defined with implementation of appropriate signage and pavement markings clearly showing the student loading zone and each vehicle position. The loading lane shall be designed to provide the maximum loading area possible. During drop-off times, school staff shall be positioned along the drive aisle to ensure that students do not unload outside of the designated loading zone.
- On-street parking along the southern project site frontage on Cosmo Avenue shall be prohibited. The on-street parking

restriction may be permanent (red curb) or time-restricted to the school peak hours only.

- The proposed charter school shall implement 30-minute staggered start times; specifically, a start time of 8:00 AM for upper grade levels (sixth through eighth grades) and 8:30 AM for lower grade levels (kindergarten through fifth grades).

TRA-5: Final project improvement plans prepared for the proposed project shall demonstrate that double solid striping shall be installed on Cosmo Avenue, along the project frontage to the intersection of Monterey Road/Cosmo Avenue, to prohibit left-turn movements from eastbound and westbound Cosmo Avenue into and out of the project site driveway. The plans shall be reviewed and approved by the City Engineer.

TRA-6: A "Safe Routes to School" (SRTS) program will be developed and in concert with the City and the improvements identified in that plan shall be required before

ENGINEERING COMMENTS

A. FEMA FLOOD REQUIREMENTS:

1. Project is located in a FEMA Special Flood Hazard Area (SFHA) floodplain zone AE, which will require a flood study. The flood study shall use the FEMA Flood Insurance Study (FIS) effective model of West Little Llagas Creek to demonstrate that the proposed placement of fill does not significantly increase the flood risk in the area during a 100-year flood event.
2. **The flood study has been prepared and shall be submitted directly to Santa Clara Valley Water District (SCVWD) for review and approval;** fees to SCVWD for the review of the flood study shall be paid in full prior to City acceptance of the flood study and Planning approvals. Project shall file the appropriate conditional/final FEMA Letter of Map Revision (CLOMR/LOMR or CLOMR-F/LOMR-F) as required by the results of the flood study. **(CMH Design Standards and Standard Details for Construction)**
3. Finished floors shall be elevated 1 foot above the FEMA base flood elevation (BFE). If the BFE shall be republished to due to cumulative increase of the BFE by greater than 0.10 feet, the lowest finished floor shall be elevated 1 foot plus the cumulative increase in BFE.
4. Project may be required to be designed to have a zero net fill so that the current FEMA BFE shall not increase the cumulative 1 foot increase; supporting calculation and flood study shall be review and approved by SCVWD.

B. GRADING: The top of bank of the creek shall be determined by a biologist. The allowed set back shall be 35 feet from the top bank as determined by a biologist including if any riparian areas. NOTE: there can be no construction activity within the 35 feet set back. Plans shall be updated to show top of bank and setback area.

C. TRAFFIC:

1. The Fire Lane exit on Monterey shall not have a standard drive approach but will be standard curb and gutter with emergency bollards across the driveway throat.
2. Per the circulation plan, there shall be only right turn in and right turn out only.
3. To prevent left turn in on Cosmo, double solid striping shall be delaminated to indicate no left turn in.

At Monterey and San Pedro the LOS is will be reduce to F as a result of the project; to mitigate this reduction, the median shall be reconfigured to not allow left turns from San Pedro on to Monterey (southbound) and provide a left turn pocket for APN 767-17-051 for Monterey (northbound).